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36 N.J.R. 1029(a)
36 N.J. Reg. 1029(a)

NEW JERSEY REGISTER
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TUESDAY, FEBRUARY 17, 2004
RULE ADOPTION
TREASURY-TAXATION
DIVISION OF TAXATION
UNCLAIMED PROPERTY
DEFINITION OF HOLDER; TIME DEPOSITS; PAYMENT OF CLAIM BY
ADMINISTRATOR

Adopted New Rules: N.J.A.C. 18:13-2 and 3

Adopted Amendment: N.J.A.C. 18:13-1.2

Proposed: September 15, 2003 at 35 N.J.R. 4217(a).

Adopted: January 13, 2004 by Stephen M. Sylvester, Administrator,
Unclaimed Property, Division of Taxation.

Filed: January 13, 2004 as R.2004 d.65, without change.

Authority: N.J.S.A. 46:30B-107.

Effective Date: February 17, 2004.

Expiration Date: December 18, 2005.

Summary of Public Comments and Agency Responses:

The Division received the following comments to the proposal from Mary Kathryn Roberts, Esq., of Riker Danzig, Attorneys at Law, on behalf of the New Jersey Bankers Association, and James M. Meredith, Sr., Vice President, New Jersey League of Community Bankers. Because both sets of comments raise the same issues, they are combined for purposes of brevity:

COMMENT: Certain accounts, given their long-term nature, will only have minimal activity and so do not warrant the frequent level of communication mandated by the proposed regulations. Not requiring communications at least every three years, as the proposed regulations would, would prevent an undue burden and inconvenience on customers of these accounts. Those accounts should be excluded from the term "time deposit" as defined in proposed N

.J.A.C.

18:13-2.1. They are: (1) deposits during any period when withdrawals may be made only upon a court order; (2) deposits established under the "New Jersey Uniform Gifts to Minors Act" (N.J.S.A. 46:38-13 et seq.) or the New Jersey Uniform Transfers to Minors Act (N.J.S.A. 46:38A-1 et seq.); (3) burial reserve accounts and similar deposits established under written agreements to provide for the funeral or burial expenses of a person while the person is still alive; and (4) tenant security deposits established and held pursuant to N.J.S.A. 46:8-19 et seq.

RESPONSE: The primary reason for requiring communication between a holder and the owner of an account is to ensure that the owner does not lose track of his or her property. This holds true whether the account may be held for a short or long time. Long standing public policy is to try to prevent property from becoming abandoned. Owners of deposits and similar accounts may move, misplace records or otherwise forget that they have funds which may be due and owing to them. This may certainly be the case where deposits may be held subject to release by a court order or made under the Uniform Gifts to Minors or the New Jersey Uniform Transfers to Minors Acts. Individuals and/or persons responsible for their funeral or burial arrangements may, over time, become unaware of funds being held for those specific purposes without being reminded in a timely manner that those funds are being held for their benefit. Tenants whose landlords are holding security deposits in trust for them, placed in financial organization accounts by landlords pursuant to N.J.S.A. 46:8-19, may vacate rental units, voluntarily or involuntarily, leaving their security deposits behind. Maintaining communications requirements within the statutory three year period increases the likelihood that none of these deposits will be abandoned by their owners. Additionally, the Legislature had the opportunity to exclude the above categories of deposits from the presumption of abandonment.

ent for
deposits. Senate Committee Substitute for Senate Bills Nos. 1814
and 1925
had specifically stated that these categories were to be excluded
under
N.J.S.A. 46:30B-18. However, the final bill approved by the Legis-
lature and
signed into law contained none of these exclusions. Accordingly,
the
Legislature did not intend that any of these deposit categories w-
ould or should
be excluded from the presumption of abandonment that otherwise go-
verns
deposits.

Federal Standards Statement

The adopted new rules and amendment do not contain requirements
that exceed
any requirements imposed by Federal law. The adopted new rule and
amendment
represent policies of the State of New Jersey regarding implement-
ation of
N.J.S.A. 46:30B-1 et seq., that are independent of Federal requir-
ements or
standards. Accordingly, no Federal standards analysis is required
.

Full text of the adoption follows:

SUBCHAPTER 1. SAFE DEPOSIT BOX POLICIES AND PROCEDURES

<< NJ ADC 18:13-1.2 >>

18:13-1.2 Definitions

The following words and terms, when used in this chapter, shall
have the following meanings, unless the context clearly indicates
otherwise:

...
"Holder" means a person, wherever organized or domiciled, who
is the original obligor indebted to another on an obligation.

...
"Owner" means a person, or the owner's legal representative, who
is renting or leasing a safe deposit box, or other safekeeping
repository, or otherwise has a legal or equitable interest in
property subject to this chapter and includes, but is not limited
to, a depositor in the case of a deposit, a beneficiary in the
case of a trust other than a deposit in trust, and a creditor,
claimant, or payee in the case of other property.

...

SUBCHAPTER 2. TIME DEPOSITS

<< NJ ADC 18:13-2.1 >>

18:13-2.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Administrator" means the Treasurer of the State of New Jersey, any individual serving as the Acting Treasurer in the absence of the appointed Treasurer, and any State employee to whom the Treasurer has delegated authority to administer the provisions of N.J.S.A. 46:30B-1 et seq., and to execute any pertinent documents.

"Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued or owing by the holder.

"Communicated in writing" includes:

1. Written notification by the owner or a facsimile or e-mail transmission of the facsimile initiated by the owner to the financial organization which is the holder of the owner's time deposit, of a change of address of the owner;

2. Written signed confirmation by the owner in response to an oral or written communication from the financial organization;

3. The cashing of a check by the owner at the financial organization which is the holder of the owner's time deposit;

4. The making of a deposit or withdrawal with the financial organization which is the holder of the owner's time deposit;

5. Electronic accessing by the owner of any account of the owner held by the financial organization which is the holder of the owner's time deposit;

6. Responding to financial privacy "opt out" notices; or

7. Any other type of written correspondence made by the owner of the property to the financial organization.

"Financial organization" means a savings and loan association, building and loan association, credit union, savings bank, industrial bank, bank, banking organization, trust company, safe deposit company, private banker, or any other organization defined by other law as a bank or banking organization, which is the holder of a time deposit.

"Holder" means a financial organization, wherever organized or domiciled, which is the original obligor indebted to another on an obligation.

"Maturity" means the date on which a time deposit may be redeemed or renewed.

"Owner" means a person, or the owner's legal representative, who is renting or leasing a safe deposit box, or other safekeeping repository, or otherwise has a legal or equitable interest in property subject to this chapter and includes, but is not limited to, a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

"Time deposit" means an interest-bearing deposit at a financial organization that has a specific maturity date, including, but not limited to, a certificate of deposit, and any deposit that is automatically renewable, held by or in a financial organization.

<< NJ ADC 18:13-2.2 >>

18:13-2.2 Conduct by owner indicating interest in time deposit

(a) The following acts by the owner of a time deposit shall constitute non- abandonment of the time deposit:

1. Consent in writing to a renewal of the time deposit at or about the time of renewal and signed by the owner, given by delivery of the original, a signed facsimile or an e-mail transmission of the facsimile initiated by the owner, or demonstrated by the existence of a memorandum made at the time of renewal or other record on file with holder; or

2. The owner, within three years after the earlier of maturity date or the date of the last indication by the owner of an interest in the deposit, has:

- i. Increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

- ii. Communicated in writing with the financial organization concerning the time deposit, including requesting that the time deposit be redeemed;

- iii. Otherwise indicated an interest in the deposit as evidenced by a contemporaneous memorandum or other record on file prepared by an employee of the financial organization; or

- iv. Owned other property to which (a)2i, ii and iii above apply and the financial organization communicates in writing with the owner about the deposit that would otherwise be presumed

abandoned under this section at the address to which communications regarding the other property regularly are sent; or

v. Had another relationship other than time or demand deposits, such as, but not limited to, a safe deposit box, mortgage, stocks, bonds or other investments, with the financial organization concerning which the owner has:

(1) Communicated in writing with the financial organization; or

(2) Otherwise indicated an interest as evidenced by a contemporaneous memorandum or other record on file prepared by an employee of the financial organization and the financial organization communicates in writing with the owner about the time deposit that would otherwise be abandoned under this section at the address to which communications regarding the other relationship regularly are sent.

(b) The date on which the owner has last indicated an interest in and awareness of the owner's time deposit, as defined in (a) above, or the date of maturity if no conduct evidencing such interest is made, whichever is earlier, shall start the running of the three year abandonment period. However, a written communication mailed to an owner and returned marked "undeliverable" or "unclaimed" shall be deemed to start the running of the abandonment period from the date of receipt by the financial organization of the returned mailing. When periodic interest checks are issued on a time deposit, the abandonment period will commence on the date of an uncashed interest check, and the time deposit will be considered abandoned if all subsequent interest checks continue to remain uncashed through the entire statutory abandonment period, unless there is other conduct by the owner indicating interest in the time deposit as specified elsewhere in this section and applicable statutory law.

(c) If an automatically renewable time or nonrenewable deposit is deemed abandoned prior to its initial maturity, the time for delivery of the time deposit to the administrator will be extended to the date of maturity pursuant to N.J.S.A. 46:30B-21 or three years from the date at which the abandonment period commenced, whichever is later.

<< NJ ADC 18:13-2.3 >>

18:13-2.3 Notice to apparent owners of time deposits by certified mail, return receipt requested, before the filing of a report by the holder

(a) Not more than 120 days nor less than 60 days before filing the report of abandoned property with the administrator, the holder in possession of a time deposit presumed abandoned and subject to custody as unclaimed property, shall send, by

certified mail, and with return receipt requested, written notice to the apparent owner at the apparent owner's last known address informing the apparent owner that the holder is in possession of property subject to the custody of the State, if:

1. The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate; and

2. The property has a value of \$50.00 or more.

(b) Notices sent by certified mail, return receipt requested, by financial organizations pursuant to N.J.S.A. 46:30B-50, shall contain, but not be limited to, the following language:

"Please contact us immediately, either in person, in writing, by telephone or electronically. Our review of the account referenced below indicates that there has been no contact or activity in your account for at least three years. Under New Jersey's Uniform Unclaimed Property Act we are required to make a diligent attempt to renew contact. If contact is not renewed we are required to transfer your account to the custody of the State of New Jersey. The State is required to maintain custody of these funds until you come forward to claim them from the State. The State must pay you interest when the funds are returned."

In addition, the following is suggested language for inclusion, but may be modified by the holder as appropriate:

"To reestablish contact and avoid having your account transferred to the State, you may sign below and return this letter in the enclosed envelope no later than (insert #of days) from the date of this letter. Once we receive the signed letter we will restore your account to an active status. The account will also be restored to active status if you make a deposit or withdrawal on your account to show immediate activity, or by simply calling us at (insert bank tel. #). You can also e-mail us at (insert e-mail address) or by electronically accessing your account if your account is set up for electronic access. This type of routine contact assures that accounts are not incorrectly classified as abandoned. If you have any updated address information, please provide it in the space below."

<< NJ ADC 18:13-2.4 >>

18:13-2.4 Notice to apparent owners of time deposits by regular mail

The holder may, at any time, send a written notice to the apparent owner of a time deposit by regular mail in an attempt to establish contact that would recommence the running of the abandonment period. However, failure to establish contact with the apparent owner by regular mail that is sent less than 120 days but not less than 60 days before the filing of the report to

be sent to the administrator as required by N.J.S.A. 46:30B-50, shall not relieve the holder from sending the required written notice by certified mail return receipt requested as set forth in N.J.A.C. 18:13-2.3 above. The written notice by regular mail shall contain the mandatory language which may be supplemented by the suggested language set forth in N.J.A.C. 18:13-2.3(b).

SUBCHAPTER 3. PAYMENT OF CLAIM BY ADMINISTRATOR

<< NJ ADC 18:13-3.1 >>

18:13-3.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Administrator" means the Treasurer of the State of New Jersey, any individual serving as the Acting Treasurer in the absence of the appointed Treasurer, and any State employee to whom the Treasurer has delegated authority to administer the provisions of N.J.S.A. 46:30B-1 et seq., and to execute any pertinent documents.

"Searcher" means any person whether related by blood or otherwise, and any business entity, that enters into an agreement or authorization, with a claimant, to locate, deliver, recover or assist in the recovery or claim of abandoned property, whether or not for compensation.

<< NJ ADC 18:13-3.2 >>

18:13-3.2 Payment to be made; claimant's address and signature in claim form; corporate claims

(a) Notwithstanding any language in any agreement, authorization or other writing with a searcher, whether for compensation or not, to locate, deliver, recover or assist in the recovery or claim of abandoned property, payment of any such claim, as approved by the administrator, shall be made by the administrator directly to the actual claimant, to the claimant's fiduciary named for a purpose other than the sole purpose of collecting the claim from the administrator, or to a court appointed representative authorized to collect the property of the claimant.

(b) Any claim form for unclaimed property as prescribed by the administrator, submitted to the administrator by a claimant, shall state the actual claimant's own address and be verified by the actual claimant's signature.

(c) Unless expressly directly otherwise by statute or court order, payment of a claim shall be made by the administrator to the actual claimant and sent to the claimant at the claimant's

own address. The administrator will make payment jointly to a claimant and a claimant's attorney only when expressly directed to do so by court order.

(d) If a claimant is a business association as defined by N.J.S.A. 46:30B- 6d and claims abandoned property as being owned by the business association, the business association shall provide proof that the business association is not dissolved or has not had its charter revoked for any reason by producing a current certificate of good standing (short form), status report, tax clearance certificate, or other document issued by the State of New Jersey showing good standing prior to any claim being paid to that claimant.

36 N.J.R. 1029(a)
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